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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,399	08/01/2000	David A. Selby	RSW9-2000-0094-US1	5648

7590 02/18/2004

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EXAMINER

DIXON, THOMAS A

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/628,399

Applicant(s)

SELBY, DAVID A.

Examiner

Thomas A. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 27 is/are allowed.
- 6) ☒ Claim(s) 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 6/09/03 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the files are confidential and may not properly be considered. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 14-26 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The preamble reads "Computer-readable code stored on a media..." but should be "executable on a computer" or such language, otherwise it is code per-se and non statutory.

Allowable Subject Matter

3. Claims 1-13, 27 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter:

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As per Claims 1, 27.

The prior art of record, specifically Jung ('936) in view of Sharp (JP 06176038) does not disclose:

- calculating, based on said comparison, the likelihood that said wait-listed reservations will materialize if promoted to reserved status;
- ordering said wait-listed reservations based on their likelihood of materization;
- outputting said ordered wait-listed reservations.

Jung ('936) discloses:

- gathering past reservation information relating to past reservations for perishable commodities that have already perished, see figure 1 (10);

- gathering wait list reservation information relating to wait listed reservations for perishable commodities that have not yet perished, see column 1, line 65 – column 2, line 14;

- comparing past reservation information and said wait list reservation information, see column 2, lines 41-49;

Jung does not disclose:

- calculating, based on said comparison, the likelihood that said wait-listed reservations will materialize if promoted to reserved status;
- ordering said wait-listed reservations based on their likelihood of materization;
- outputting said ordered wait-listed reservations.

Sharp teaches a wait list promotion system based on what appears to be "the ten minute rule" mentioned in Jung, but does not disclose calculating based on comparison of past information and reservation information the likelihood of materialization.

Applicant's disclosure, page 7, line 12 – page 8, line 11 hint at a prior art method for promoting wait listed potential purchasers, but does not disclose calculating based on comparison of past information and reservation information the likelihood of materialization.

The Claims that depend from the above allowed claims are allowed for the same reasons.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas A. Dixon
Examiner
Art Unit 3629

February 10, 2004